MAJLIS PEGUAM MALAYSIA & 3 ORS.

v.

JOSEPH AU KONG WENG

SUPREME COURT, KUALA LUMPUR
TUN DATO' SERI HJ. ABDUL HAMID
BIN HJ. OMAR LP, DATUK EDGAR
JOSEPH JR., DATUK MOHAMED
DZAIDDIN BIN HJ. ABDULLAH SCJJ
[SUPREME COURT CIVIL APPEAL
NO: 02-371-91]
14 APRIL 1993

LEGAL PROFESSION: Disciplinary proceedings - Provisions as to time in ss. 98 & 99 Legal Profession Act 1976 - Whether directory or mandatory - Non-compliance with time limits - Effect.

INTERPRETATION OF STATUTES: Legal Profession Act 1976 - Provisions as to time - Whether directory or mandatory - Principles of interpretation of statutes.

The Hon. Sec. of the first appellant made a complaint against the respondent, an advocate and soliciter, which was referred to the State Bar Committee which forwarded its report and recomendation to the first appellant. The first appellant subsequently applied to the Chief Justice for the appointment of a Disciplinary Committee to investigate the complaint pursuant to the provisions of s. 98 of the Legal Profession Act 1976 (the Act).

The respondent contended that the application to the Chief Justice was out of time as it had exceeded the six weeks period provided by the Act and submitted that the scheme of the Act was such as to ensure that complaints were dealt with speedily as this would serve the interests of the complainant, the advocate and solicitor concerned and the public. On this view it was submitted that the time limits concerned were mandatory.

Counsel for the appellants on the other hand submitted that the time limits imposed by ss. 98 & 99 of the Act were not mandatory but directory. He stated that these sections were purely procedural and that once a complainant had lodged a complaint he had no control over the steps which followed under the Act. As such, said Counsel, Parliament could not have intended that the time limits imposed by these sections were to be mandatory.

The trial Judge found in favour of the respondent and the appellants' appealed.

Held:

[1] In construing a statutory instrument what the Court endeavours to do is to construe it according to the object and intent of Parliament from the words Parliament has used.

[2] A reading of the time table provided under Sections 93 to 103 with regard to Disciplinary Proceedings under Part VII of the Act shows that the expeditious disposal of complaints is what is sought to be enforced by the Act in providing for safeguards against delay, in order to ensure that an innocent advocate and solicitor clears himself of any stain or suspicion of misconduct as soon as possible or conversely, that a guilty advocate and solicitor is dealt with as soon as possible in the public interest.

[3] Whereas s. 101(3) of the Act confers upon the Chief Justice a discretion to extend the time period, no power to extend time is given with regard to the time limits laid down by ss. 96, 98 and 99 of the Act. This is a clear indication by the legislature that time is of the essence with regard to the various steps in considering a complaint against an advocate and solicitor prescribed by ss. 96, 98 and 99 of the Act.

[4] The time limits imposed by ss. 98 and 99 of the Act are mandatory and non-compliance with these time limits rendered the proceedings under the Act against the respondent, including the appointment of the Disciplinary Committee, incurably illegal, void and of no effect.

[Appeal dismissed with costs].

[**Bahasa Malaysia** Translation of Headnote]

PROFESION UNDANG-UNDANG: Tindakan tatatertib - Peruntukan mengenai masa dalam ss. 98 & 99 Akta Profesion Undang-Undang 1976 - Sama ada panduan atau mandatori - Ketidakpatuhan had masa - Kesannya.

PENTAFSIRAN STATUT: Akta Profesion Undang-Undang 1976 - Peruntukan mengenai masa - Sama ada panduan atau mandatori - Prinsip-prinsip pentafsiran statut.

Setiausaha Kehormat perayu pertama telah membuat satu pengaduan terhadap responden, seorang peguambela dan peguamcara, yang mana telah dirujukkan kepada Jawatankuasa Peguam Negeri yang telah memajukan laporan dan pengesyorannya kepada perayu pertama. Perayu pertama kemudiannya memohon

kepada Hakim Besar bagi perlantikan Jawatankuasa Tatatertib bagi menyiasat aduan berkenaan menurut peruntukan s. 98 Akta Profesion Undang-Undang 1976 (Akta tersebut).

Responden telah mendebatkan bahawa permohonan kepada Hakim Besar adalah di luar masa memandangkan ianya telah melampaui tempoh enam minggu yang disyaratkan oleh Akta tersebut dan menghujahkan bahawa skema Akta tersebut adalah untuk menentukan bahawa aduan-aduan diuruskan dengan segera kerana ia melibatkan kepentingan pengadu, peguam yang berkenaan dan orang awam. Atas pandangan inilah dihujahkan bahawa had masa yang berkenaan adalah mandatori.

Sebaliknya Peguam bagi perayu-perayu telah menghujahkan bahawa had masa yang dikenakan oleh s. 98 & 99 Akta tersebut tidak mandatori tetapi sebagai panduan. Beliau menyatakan bahawa seksyen-seksyen ini cuma sebagai prosedur dan apabila seorang pengadu telah membuat pengaduannya, dia tidak mempunyai kawalan ke atas langkah-langkah yang terdapat di dalam Akta tersebut. Oleh yang demikian, kata Peguam tersebut, Parlimen tidak mungkin berniatkan bahawa had masa yang dikenakan oleh seksyen-seksyen ini sepatutnya bersifat mandatori.

Hakim perbicaraan membuat keputusan memihak kepada responden dan perayu-perayu telah membuat rayuan.

Diputuskan:

[1] Dalam mentafsirkan suatu suratcara statutori, apa yang Mahkamah berikhtiar untuk lakukan ialah mentafsirkannya mengikut matlamat dan niat Parlimen daripada kata-kata yang telah digunakan oleh Parlimen.

[2] Pembacaan jadual yang diperuntukkan di bawah s. 93 hingga 103 berhubung dengan Tindakan Tatatertib di bawah Bahagian VII Akta tersebut menunjukkan bahawa apa yang ingin dikuatkuasakan oleh Akta tersebut ialah supaya aduan-aduan diselesaikan dengan segera dalam memperuntukkan perlindungan terhadap kelengahan, untuk menentukan supaya seseorang peguam yang tidak bersalah dapat membersihkan dirinya daripada sebarang kecemaran atau syak wasangka mengenai salah laku dengan secepat mungkin atau sebaliknya bahawa seseorang peguam yang bersalah dikenakan tindakan secepat mungkin demi kepentingan umum.

[3] Walaupun s. 101(3) Akta tersebut memberikan Hakim Besar budibicara untuk melanjutkan tempoh masa berkenaan, kuasa untuk melanjutkan tempoh masa tidak diberikan berhubung dengan had masa yang ditetapkan di bawah ss. 96, 98 dan 99 Akta tersebut. Peundangan ini jelas menunjukkan bahawa masa adalah intipati berhubung dengan beberapa langkah dalam menimbangkan sesuatu aduan terhadap seseorang peguam sebagaimana yang diperihalkan oleh ss. 96, 98 dan 99 Akta tersebut.

[4] Had masa yang dikenakan oleh ss. 98 dan 99 Akta tersebut adalah mandatori dan ketidakpatuhan had masa ini akan membuatkan tindakan terhadap responden di bawah Akta tersebut, termasuklah perlantikan Jawatankuasa Tatatertib sebagai menyalahi undang-undang, tidak sah dan tidak berkesan langsung.

[Rayuan ditolak dengan kos].

Cases referred to:

Montreal Street Railway Co. v. Normandin [1917] AC 170 at 174 (***dist***)

Plastic Enterprises Pty. Ltd. v. The Southern Cross Assurance Co. Ltd. [1968] Qd. R 401 at 404 (***refd***)

Cheatley v. The Queen [1972] 127 CLR 291 at 296 (***refd***)

Attorney-General (Canada) v. Hallett & Carey Ltd [1952] AC 427 at 449 (***refd***)

Bank of New Zealand v. Cermac Modular Industries Ltd. [1972] NZLR 661 at 670 (***refd***)

Farrell v. Alexander [1977] AC 59 at 81 (***foll***)

Stock v. Frank Jones (Tipton) Ltd. [1978] 1 WLR 231 at 236, 238 (***foll***)

Ex p Tasker re Hamman [1971] 1 NSWLR 804 at 808 - 809 (***refd***)

Vandyke v. Vandyke [1976] 12 ALR 621 at 643 (***refd***)

Graham v. AA-G [1966] NZLR 937 at 953, 955 (***refd***)

Howard v. Baddington [1877] 2 PD 203 at 210 - 211 (***refd***)

Punjab Co-operative Bank Ltd., Amristar v. CIT Lahore AIR [1940] PC 230 (***refd***)

Sheffield City Council v. Grangers Wines Ltd. [1977] 1 WLR 1119, 1122 (***refd***)

Barker v. Palmer [1881] 8 QBD 9 at pp. 10 - 11 (***refd***)

Transport Amalgamated Pty. Ltd. v. AAA Transport Services Pty. Ltd. [1975] 11 SASR 255 (***refd***)

Queen v. Police Appeal Board; Ex parte McGee [1984] 36 SASR 455 at 457 (***refd***)

Arthur Yates & Co. Ltd. v. Ministry of Agriculture and Fisheries [1979] 1 NZLR 469 at 472 (***foll***)

Legislation referred to:
Legal Profession Act 1976, ss. 95(1)(3), 96(1)(2), 97(1), 98(a)(b)(c), 99(1)(2)(3)(4)(5), 101(3)
Revised Statutes of Quebec 1909, Article 3426 (Canada)

Other sources referred to:
Craies on Statute Law (7th Edn.) p. 266

For the appellants - Cecil Abraham (Maizuara Mohamed with him); M/s. Shearn, Delamore & Co.
For the respondent - Bastian Vendargon (Anthony M. Sebastian with him); M/s. Vendargon & Partners

[**Ed. Note:** The decision of the High Court is to be found at pg. 452]

JUDGMENT

Edgar Joseph Jr. SCJ:
This appeal revolves around the question whether the provisions as to time as set forth in ss. 98 and 99 of the Legal Profession Act 1976 ("the Act") in the form that it took prior to its amendment by the Legal Profession (Amendment) Act 1992, being Act A812, which came into force on 1 April 1992 by virtue of Legal Notification 117 dated 9 March 1992, are mandatory or directory.

In this judgment all references to sections shall, unless the context otherwise requires, be to the Act.

Upon an application by originating summons taken out by the plaintiff, Mr. Joseph Au Kong Weng, an advocate and solicitor, against whom a complaint by the then Secretary of the Bar Council, under s. 95(1) of the Act had been made, alleging misuse of his firm's Trust Account, citing the Bar Council, States of Malaya, and the members of a Disciplinary Committee appointed by the Chief Justice under s. 99, consequent thereto, namely, Messrs. Harbans Singh Bhal, Lee Kwong Wah and Dato Mohd. Amin bin Mohd. Daud, as the first, second, third and fourth defendants respectively, Eusoff Chin J. (as he then was) decided that the provisions as to time were mandatory, and that consequently, on the facts before him the appointment of the Disciplinary Committee was invalid, null and void, and from that decision the defendants have appealed to this Court.

We were told at the outset of this appeal that the question arising for decision on this appeal is of great importance to the public and to the legal profession, as our decision would affect a very large number of complaints now pending under the Act, one way or another.

To put matters in their correct perspective, it is first of all, necessary to refer to the procedure prescribed by the Act which govern complaints under it; so far as material to the present appeal, it is as follows:

A complaint may be made against an advocate and solicitor, a pupil or an article clerk and must be made to the Bar Council (s. 95).

The Bar Council must refer every complaint to the relevant State Bar Committee for investigation (s. 95(3)).

The State Bar Committee to whom the complaint has been referred must then investigate the complaint regardless of its merits (s. 96(1)). In doing so, it is required to:

(a) prepare a written statement setting out the substance of the complaint;

(b) give notice to the advocate and solicitor concerned of not less than 14 days -

(i) to furnish a written explanation; and
(ii) to advise the State Bar Committee if he wishes to be heard by them.

(c) give the advocate and solicitor concerned a "reasonable opportunity" to be heard.

The State Bar Committee is allowed the space of three months to fulfill its duties under the Act (s. 96(2)).

At this point we would interject to refer to the practical problems which confront the State Bar Committee in fulfilling its duties under the Act; they are set forth in an affidavit dated 23 October 1990 affirmed by Dato Peter Mooney, the chairman of the complaints committee of the Bar Council and are as follows:

7. State Bar Committees are composed of members of the Bar who, like members of the Council, are all volunteers, are prepared to give time and effort without reward to the service of the Bar and the public. They normally meet once a month. Any complaint arriving from the Bar Council has to wait the first meeting thereafter and accordingly:

(1) there may be an interval of up to a month before the State Bar Committee sees the complaint;

(2) thereafter, it has to decide whether the complaint is likely to be frivolous or vexatious. If it is, then the Committee has to write to the complainant for a deposit and await this before taking the next step;

(3) it then has to prepare a written statement setting out the substance of the complaint. This may not be a simple task since there may be many documents submitted by a complainant and the complaint itself may be lengthy and badly expressed.

(4) the respondent has to be given at least 14 days' notice. Not infrequently the subject matter of the complaint is an event which has its origins several years back. The respondent may not reply to the first letter from the Committee and may need a reminder. He frequently writes and asks for time to look at all papers and study them before answering. This request can hardly be refused.

(5) his answer when submitted has to await the next meeting of the Committee. This could be the second monthly meeting after the receipt of the complaints by the Committee but it might well be the third.

(6) the respondent is entitled to be heard by Committee and this takes the matter up to the third or quite possibly the fourth monthly meeting of the Committee after the receipt of the complaint.

(7) the Committee has to deliberate on all the written and oral material and has to prepare a report and submit it to the Council.

(8) the Committee is allowed the space of three months for all this.

To revert to the provisions as to procedure governing complaints under the Act in the event of the State Bar Committee failing to fulfill its duties under the Act within the three-month time limit provided for in the Act, the Bar Council must refer the complaint to the Inquiry Committee (s. 96(2)) who are required to forthwith investigate the complaint and to report thereon, with its recommendations, within the same time limit as that provided for in the Act for the State Bar Committee (s. 97(1)).

Again we interject, to refer to the practical problems which confront the Inquiry Committee in fulfilling its duties under the Act; they are set forth in the affidavit of Dato Peter Mooney and are as follows:

9. ... The Inquiry Committee has to start all over again and is subject to the same time limits as the State Bar Committee with the additional difficulty that it meets in Kuala Lumpur and does not have the advantage of being in the State where the advocate and solicitor is practising and where, in most cases, the complainant resides or has his place of business.

10. When the Council receives a report from the State Bar Committee or Inquiry Committee, it may well be out of time. If the provision as to time is mandatory, then there is no point in the Council considering the complaint any further. This would mean the frustration of many complaints. The Council has always viewed the provisions as to time as directory and has gone on to deal with them despite the contravention of the time limit.

Reverting once again to the provisions as to procedure governing complaints under the Act, in the event of the Bar Council receiving a report from the State Bar Committee or Inquiry Committee, the Bar Council must, within six weeks from the date of such receipt, determine whether a formal enquiry by a Disciplinary Committee is necessary (s. 98(a)), and if it determines that it is necessary, it must forthwith apply to the Chief Justice to appoint a Disciplinary Committee to conduct a formal inquiry within 14 days after receiving an application from the Bar Council (s. 98(b)). A Disciplinary Committee consists of 3 advocates and solicitors of 7 years' standing, and having valid practising certificates. The Chief Justice shall within 14 days of an application made by the Bar Council appoint the Disciplinary Committee (s. 99(1)) and he has the discretion under s. 99(3) of the Act to revoke the appointment, or remove any member of a Disciplinary Committee, or fill any vacancy in a Disciplinary Committee.

Commenting on this stage of the proceedings, in particular the practical problems which confront the Bar Council, Dato Peter Mooney in his affidavit has this to say:

11. The Council is given six weeks to determine whether a formal inquiry by a disciplinary committee is necessary. This looks like an adequate time. In practice, it is not so. There are 34 members of the Council. It is impossible for all 34 members to examine the complaints, either collectively or individually. By the time the report is submitted to the Council, it is the last paper in what is likely to be a bulky file containing the original written complaint, copies of all documents relating to the complaint, the written answer of the respondent and any copy documents which he has submitted, further answers by the complainant, further answers

> by the respondent and the report and recommendation of the State Bar Committee. In order to deal with these files, the Council has delegated its functions regarding complaints to the Complaints Committee. This consists of twelve members and meets once a month. In view of the volume of complaints and the bulk of the files it is not possible for all twelve members to study every file and the procedure is that each file is individually studied by three members and is reported to the Committee at its monthly meeting. These three members may be in different parts of the country. On receipts of their report, the Council Secretariat will send it to an individual member. He studies it and sends it direct or passes it back to the Secretariat to be sent to the next member and similarly for the third member. The minimum time involved in this is three weeks and it is usually longer. The report then has to be made to the next meeting of the Committee which may be nearly a month away in which case inevitably the time limit is exceeded. Moreover, a difficult case where there is disagreement within the Complaints Committee may be referred to the Council and inevitably the time limit is exceeded.

Reverting yet again to the provisions as to procedure governing complaints under the Act, in the event of a Disciplinary Committee appointed by the Chief Justice not being able to complete its inquiry into a complaint against an advocate and solicitor in his professional capacity, and to file the order it has made in respect of the inquiry, with the Bar Council and the Registrar of the High Court within three months from the date it was appointed, the Chief Justice is empowered, upon application being made to him by the Disciplinary Committee, to extend the period of three months under s. 101(3) of the Act.

The chronology of events relevant to this appeal is undisputed and may be stated thuswise:

The Honourary Secretary, Bar Council, had made a complaint dated 6 June 1988 under the Act against the respondent advocate and solicitor and his partner Mr. Malek, with respect to mismanagement of their firm Messrs. Malek & Joseph Aus' trust account.

On 3 July 1988, the Bar Council referred this complaint to the State Bar Committee, Pahang.

On 3 September 1988, the State Bar Committee Pahang had forwarded its report and recommendation to the Bar Council.

On 26 October 1988, the Bar Council had applied to the Chief Justice, Malaya, for the appointment of a Disciplinary Committee to investigate the complaint. But, regard being had to the provisions of s. 98 of the Act, it had only six weeks from the date of receipt of the report and recommendation of the State Bar Committee, Pahang, to apply to the Chief Justice for the appointment of a Disciplinary Committee, so that its last day for doing so was 15 October 1988. In other words, it was out of time by some twelve days.

Before us, Counsel for the appellants repeated his submission in the Court below that the time limits imposed by ss. 98 and 99 of the Act were not mandatory but directory. He pointed out that these sections were purely procedural, that once a complainant had lodged a complaint he had no control over the steps which followed under the Act, and so Parliament could not have intended that the time limits imposed by these sections were to be mandatory.

In support, the Privy Council case of *Montreal Street Railway Co. v. Normandin* [1917] AC 170 at 174 was cited. In that case, the fact that the proper procedure had not been followed with respect to the revision of jury lists was held not to affect the validity of verdicts given by juries selected from those lists. In particular, our attention was directed to the following passage in the judgment of Sir Arthur Channel when drawing the distinction between discretionary and compulsory powers:

> The question whether the provisions in a statute ... are directory or imperative has frequently arisen in this country, but it has been said that no general rule can be laid down and that in every case the object of the statute must be looked at ... When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in respect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, and at the same time we would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of acts done.

Finally, he urged that the Court would need to strike a balance between the risk of prejudice caused by any delay and the risk that a proper

inquiry into a complaint will not be attained if the appointment of the Disciplinary Committee is held to be null and void.

On the other hand, Counsel for the respondent advocate and solicitor suggested that in considering whether the time limits imposed by ss. 98 and 99, were mandatory or directory, the Court had to consider what was the purpose of Parliament imposing the time limits concerned. In answering this question, he said that it was important to recognise that in disciplinary proceedings under Part VII of the Act three interests were at stake; namely, the interest of the complainant, the interest of the advocate and solicitor concerned and the interest of the public. The scheme of the Act, he urged, was such as to ensure that complaints were dealt with speedily as this would serve the interests of all three parties. On this view, he submitted, that the time limits concerned should be held to be mandatory. Other factors which he said, went to support this conclusion were that in imposing the time limits, ss. 98 and 99 used the word "shall", that the penalties which the Disciplinary Committee could impose included the penalties of striking off and suspension, and these were penal in nature. He sought to distinguish the *Montreal Street Railway Co.* case, on the ground that there rights or benefits were at stake whereas here it was the livelihood of a professional man which was at stake.

We note that in the *Montreal Street Railway Company* case, the facts were that the respondent, in an action against the appellants for damages for personal injuries, had obtained a verdict of a jury in the Superior Court in Quebec for $12,000, for which sum judgment was entered. The appellants subsequently ascertained that the revising board for the district had not revised the lists of the jurors under article 3426 of the Revised Statutes of Quebec 1909 for several years and, principally, on that ground, they sought to impugn the verdict of the Jury.

The attempt in the Courts below, however, failed and when the matter finally reached the Privy Council their Lordships noted that although the Jury list concerned was an old one the men on it had all been qualified and probably in most cases remained so. The names were taken in proper rotation and those ultimately sworn appear all to have qualified. The Privy Council also observed that "It does far less harm to allow cases tried by a jury formed as this one was, with the opportunities there would be to object to any unqualified man called into the box to stand good, than to hold the proceedings null and void".

We also note that in dismissing the appeal their Lordships were swayed by the view taken by the trial Judge Monet J. that he ought not to interfere where the appellants had shown no prejudice; their Lordships thought this view very reasonable and also in accordance with the authorities.

It is not difficult to cite an anthology of cases affording guidance as to when a statutory provision is mandatory or directory, but, as rightly pointed out by the Court, in *Plastic Enterprises Pty. Ltd. v. The Southern Cross Assurance Co. Ltd.* [1968] Qd. R 401 at 404;

> The cases ... are confusing and to some extent apparently inconsistent.

However, one thing is clear and that is that in construing a statutory provision what the Court endeavours to do is to construe it according to the object and intent of Parliament. So, for example, in *Cheatley v. The Queen* [1972] 127 CLR 291 at 296 Barwick CJ said: "In construing the section we are seeking the intention of Parliament" and, in *Attorney-General (Canada) v. Hallett & Carey Ltd* [1952] AC 427 at 449 Lord Radcliffe said: "every statute is to be expounded according to its manifest and express intention". This has been aptly described as "the paramount rule of construction". (See *Bank of New Zealand v. Cermac Modular Industries Ltd.* [1972] NZLR 661 at 670 per North P. (NZCA)).

But, at the risk of being trite, we would add that the Courts cannot ask Parliament what its intention was; they will have to decide that question for themselves from the words Parliament has used. This point was well made by Lord Simon of Glaisdale when he said in *Farrell v. Alexander* [1977] AC 59 at 81:

> in the construction of all written instruments including statutes, what the Court is concerned to ascertain is, not what the promulgators of the instrument meant to say, but the meaning of what they have said. It is in this sense that the 'intention' is used as a term of art in the construction of documents.

And, in *Stock v. Frank Jones (Tipton) Ltd.* [1978] 1 WLR 231 at 236 the same Judge had this to say:

> The final task of construction is still, as always, to ascertain the meaning of what the draftsman has said, rather than to ascertain what the draftsman meant to say. But if the draftsmanship is correct these should coincide.

To return to the question which arises for decision in this appeal: are the provisions as to time as set forth in ss. 98 and 99 of the Act, mandatory or directory? We would say that the answer to this question depends upon the Act as a whole (see *Ex p Tasker re Hamman* [1971] 1 NSWLR 804 at 808 - 809, per Herron CJ (NSW CA)), and the legislative intention viewed from the context of the particular provision (*Vandyke v. Vandyke* [1976] 12 ALR 621 at 643 per Mahoney JA (NSW CA)), the importance of the provision and the consequences of non-compliance with it (*Graham v. AA-G* [1966] NZLR 937 at 953, 955).

An often quoted principle which affords useful guidance to us is to be found in the judgment of Lord Penzance in *Howard v. Baddington* [1877] 2 PD 203 at 210 - 211 and is as follows:

> There may be many provisions in Acts of Parliament which, although they are not strictly obeyed, yet do not appear to the Court to be of that material importance to the subject matter to which they refer, as that the legislature could have intended that the non-observance of them should be followed by a total failure of the whole proceedings. On the other hand, there are some provisions in respect of which the Court would take an opposite view, and would feel that they are matters which must be strictly obeyed, otherwise the whole proceedings that subsequently follow must come to an end. Now the question is, to which category does the provision in question in this case belong?

We must make a further general observation and that is, as pointed out by Viscount Maugham in *Punjab Co-operative Bank Ltd., Amristar v. CIT Lahore* AIR [1940] PC 230

> It is a well settled general rule that an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially.

It is with the above principles in mind, and, of course, not forgetting the submissions of Counsel and the affidavit evidence to which we have referred, that we must now embark upon a fuller consideration of the issue which arises for decision.

The sections with which we are directly concerned are ss. 98 and 99 and they provide as follows:

98. Decision of Bar Council on reports.

The Bar Council shall, within six weeks of being furnished with the report mentioned in s. 96 or s. 97 -

(a) determine whether a formal inquiry into the complaint by a disciplinary committee is necessary;

(b) if it determines a formal inquiry to be necessary, forthwith apply to the Chief Justice to appoint a disciplinary committee to conduct the formal inquiry; and

(c) notify in writing the advocate and solicitor and the person by whom the complaint was made or the information referred, of the findings of the inquiry committee or of the Bar Committee, as the case may be, and of the determination of the Bar Council made under paragraph (a).

99. Chief Justice to appoint disciplinary committee.

(1) The Chief Justice shall within fourteen days of an application made by the Bar Council in that behalf appoint a committee to be known for the purpose of this Act as a "disciplinary committee", from among advocates and solicitors of not less than seven years' standing and having valid practising certificates:

Provided that no advocate and solicitor who is a member of the inquiry committee or has been involved in the inquiry or investigation of the complaint which has led to the making of the aforesaid application shall be appointed.

(2) A disciplinary committee shall consist of three members:

Provided that its proceedings shall not be invalidated by any vacancy in its membership so long as its members are not less than two.

(3) The Chief Justice may at any time revoke the appointment of or remove any member of a disciplinary committee or fill any vacancy in a disciplinary committee.

(4) Every disciplinary committee shall appoint an advocate and solicitor to be the secretary of that disciplinary committee.

(5) The production of any written instrument purporting to be signed by the Chief Justice and making the appointment, revocation or removal referred to in this section shall be evidence that the revocation or removal has been duly made.

It appears to us that a reading of the time table provided under ss. 93 to 103 with regard to disciplinary proceedings under Part VII of the Act, the expeditious disposal of complaints is what is sought to be enforced by the Act in providing for safeguards against delay, in order to ensure that an innocent advocate and solicitor, clears himself of any stain or suspicion of misconduct as soon as possible or conversely, that a guilty advocate and solicitor, is dealt with, as soon as possible, in the public interest. The very object of expeditious disposal of complaints under the Act would be defeated if the steps to be taken consequent thereto could be treated casually and lightly. This is the first impression we get on reading the provisions concerned and we are thus reminded of the well know *dictum* of Denning MR in *Sheffield City Council v. Grangers Wines Ltd.* [1977] 1 WLR 1119, 1122 that whether a particular provision is to be treated as mandatory (or imperative) or directory "is always a matter of impression".

But, we consider that the matter must be explored further.

At first glance, we confess that we were somewhat impressed with Counsel for the appellants' submission, based on the Privy Council case of *Montreal Street Railway Company*, but on reflection we consider that it is readily distinguishable, for there, unlike here, no provision as to time was in issue. This is an important distinguishing feature because provisions as to time are always mandatory unless the Court is given a power to extend the relevant time limit.

On general principle, where a statute regulates the exercise of a right or power, or the use of a prescribed procedure, express reference to time being made, there is a marked inclination on the part of the Court to regard the relevant provision as one which must be strictly and meticulously followed out. So, for example in *Barker v. Palmer* [1881] 8 QBD 9 at pp. 10 - 11, Grove J. said:

> In construing Acts of Parliament, provisions which appear on the face of them obligatory, cannot, without strong reason given, be held only directory. The rule is, that provisions with respect to time are always obligatory unless a power of extending the time is given to the Court, and there is no such power here. In the present case the latter part of r. 7 was complied with, but not the former. It is to be observed that the word 'shall' is used with respect both to the time of delivery to the bailiff and of the service on the defendant. A reason is suggested for holding the rule to be directory merely in the one case and obligatory in the other; it is said that the period of forty days is fixed only in order to allow the bailiff a reasonable time to serve the summons, whilst the period of thirty-five days is fixed for the protection of the defendant. It is also said that the bailiff has in fact served the summons within the proper period, and therefore has waived compliance with the rule. It is impossible for the Court to speculate upon the reasons for legislation in the way suggested, or to dissect an Act of Parliament and say upon those reasons that part of an enactment is directory and part obligatory. The reasons suggested might be wholly wrong, and to act upon them here would be practically to abrogate the rule. The words of the rule are peremptory, and give no more discretion with respect to the delivery to the bailiff, than with respect to the service of the summons. Lopes J. agreed.

The principle enunciated by Grove J. in *Barker v. Palmer* was followed by Levan J. in *Transport Amalgamated Pty. Ltd. v. AAA Transport Services Pty. Ltd.* [1975] 11 SASR 255, a case where liquidators had purported to reject a proof of debt after the expiration of the time limited by statutory provisions, and it was held that they could not do so. Levan J. at pp. 102 to 103 said this:

> It appears to be well settled that in construing Acts of Parliament and presumably rules and regulations made thereunder provisions which on their face appear obligatory cannot without strong reasons being shown be held to be merely directory. The rule is that provisions with respect to time are always obligatory unless a power of extending time is given to the Court: *Barker v. Palmer.*

Similarly, the principle enunciated by Grove J. in *Barker v. Palmer*, was followed by Zelling J. in the *Queen v. Police Appeal Board; Ex parte*

McGee [1984] 36 SASR 455 at 457 where it was held that the provisions as of s. 45(1) of the Police Regulation Act 1952 - 1981, provided for the time within which an appeal shall be instituted to the Police Appeal Board, were held to be mandatory.

The following passage in **Craies on Statute Law** (7th Edn.) p. 266 under the heading: "Statutes giving jurisdiction to Courts are usually absolute" is to the like effect:

> As a general rule, statutes which enable persons to take legal proceedings under certain specified circumstances must be accurately obeyed notwithstanding the fact that their provisions may be expressed in merely affirmative language. Thus, under s. 2 of the Summary Jurisdiction Act 1857, after the hearing by a justice of the peace of any summary information, either party could, if dissatisfied ... apply in writing within three days ... to the said justice to state and sign a case setting forth the facts. In *Edwards v. Roberts* [1891] 1 QB 302 the appellant neglected to get the case stated within the three days prescribed, and it was held, in consequence, that the Court had no jurisdiction to hear the appeal. This rule may also be expressed thus - that when a statute confers jurisdiction upon a tribunal of limited authority and statutory origin, the conditions and qualifications annexed to the grant must be strictly complied with.

More particularly, ss. 93 to 103 of the Act present a picture of a code of procedure in which time is given a place of paramount importance. This is emphasised by s. 101(3) by the contrast it displays when compared with ss. 96, 98 and 99 in which time is mentioned. We say so because **whereas** s. 101(3) confers upon the Chief Justice a discretion to extend the period of three months within which a Disciplinary Committee must complete its inquiry into a complaint against an advocate and solicitor and file the order it has made in respect of the inquiry with the Bar Council and the Registrar of the High Court, no power to extend time is given with regard to the time limits laid down by ss. 96, 98 and 99. This, in our view, is a clear indication by the legislature that time is of the essence with regard to the various steps in considering a complaint against an advocate and solicitor prescribed by ss. 96, 98 and 99 except the step prescribed by s. 101(3), when time may be extended.

In the present appeal, we have reminded ourselves of Counsel for the appellants' submission that in seeking Parliament's intention, the Court will have to strike a balance between the risk of prejudice caused by any delay and the risk that a proper inquiry into a complaint will not be attained if the appointment of the Disciplinary Committee is held to be null and void. It was submitted that the former was the greater evil.

In our view, if those considerations were allowed to determine the meaning of the provisions as to time laid down in ss. 98 and 99, two different results could be achieved depending on whether the person interpreting the provisions is more sympathetic to the position of an advocate and solicitor than the position of a complainant or *vice versa*, in the objective and general sense. Such an approach overlooks the point of fundamental importance, which must never be overlooked and that is:

> The final task of construction is still, as always, to ascertain the meaning of what the draftsman had said rather than to ascertain what the draftsman meant to say

(per Lord Simon of Glaisdale in *Stock v. Frank Jones (Tipton) Ltd. ibid* at 236) and that:

> dislike of the effect of a statute has never been an accepted reason for departing from its plain language. Holt CJ said nearly three centuries ago
>
> > ... an Act of Parliament can do no wrong, though it may do several things that look pretty odd.
>
> ... (See *City of London v. Wood* [1701] 88 ER 1592 at 1602) ... Accordingly, even if one regarded the policy implicit in (the Act concerned) as open to criticism, (if) the statutory language is clear beyond doubt, (it) must prevail.

(See *Stock v. Frank Jones (Tipton) Ltd., ibid* per Lord Edmund-Davies at p. 238).

It is axiomatic that intention is an unruly horse to ride, and the warning must be constantly kept in the forefront of our minds that:

> English law prefers certainty of interpretation, based on what Parliament has said, to the uncertain approach which prevails in the United States of America, based on one Judge's feeling as to what Parliament meant

(See *Arthur Yates & Co. Ltd. v. Ministry of Agriculture and Fisheries* [1979] 1 NZLR 469 at 472. We too, prefer certainty of interpretation based on what Parliament has said.

For the reasons stated, we would answer the question posed at the outset of this judgment by saying that the time limits imposed by ss. 98 and 99 of the Act are mandatory, and that the non-compliance with these time limits rendered the proceedings under the Act against the respondent, including the appointment of the Disciplinary Committee, incurably illegal, void and of no effect.

Accordingly, the appeal is dismissed with costs. Deposit to respondent to account of taxed costs.